

MINUTES

WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
July 24, 2017 at 6:00 P.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Jeff Valiant, Chairman; Terry Dayvolt, Mike Moesner, Jeff Willis and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, staff.

MEMBERS ABSENT: Tina Baxter and Doris Horn.

MINUTES: Upon a motion by Terry Dayvolt and seconded by Mike Winge, the Minutes of the last regular meeting held June 26, 2017, were approved as circulated.

The Chairman asked if there is anyone present for the Special Use that is on the Agenda.

No one was present.

SPECIAL USE:

DOCKET NUMBER: BZA-SU-17-15

APPLICANT: Pampered Pet Nanny LLC, Megan Anderson, Mbr.

OWNER: Steven & Megan Anderson

PREMISES AFFECTED: Property located on the E side of Libbert Rd. approximately 0' NE of the intersection formed by Libbert Rd. & Vann Rd., Ohio Twp. Complete legal on file. *3488 Libbert Rd.*

NATURE OF CASE: Applicant requires a Special Use (SU 24) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an addition to an existing dog boarding facility approved in BZA-SU-11-20 on 9/26/11 and amended in BZA-SU-16-20 on 1/23/17. Addition is for a screened patio in an "A" Agriculture zoning district. *Advertised in the Standard July 13, 2017.*

Mrs. Rector said this needs to be continued to the August 28, 2017 meeting because they failed to notice the adjacent property owners by certified mail with return receipt.

Mike Winge made a motion to continue this until the August 28, 2017 meeting. The motion was seconded by Mike Moesner and unanimously carried.

VARIANCES:

DOCKET NUMBER: BZA-V-17-13

APPLICANT: Tamra England

OWNERS: Henry & Mary Lunenburg

PREMISES AFFECTED: Property located on the E side of Polk Rd. approximately 0' S of the intersection formed by Polk Rd. & Folsomville Rd. Skelton Twp. Complete legal on file. *5212 Polk Road*

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a manufactured home as a residence on property with an existing mobile home to be removed in an "A" Agriculture zoning district. *Advertised in the Standard July 13, 2017.*

Tamra England, Henry Lunenburg and Mary Lunenburg were present.

The Chairman called for a staff report.

Mrs. Rector said they still need to submit two green cards from certified mail.

Ms. England stated she has the last two with her and she handed them to staff.

Mrs. Rector stated the property has an existing mobile home where Ms. England is living and all surrounding property is zoned Agriculture. She explained there is no flood plain on the property and there is an existing driveway off Folsomville Road. She added the applicant's statement is "wanting permission to live in the current mobile home on property while the other double wide is being set up. We would have the current mobile home moved off in 60 days after the double is completely set up." She said the current mobile home received a Special Use permit in 2010 to be located on this property and the application is in order.

The applicant had nothing to add.

The Chairman called for questions from the Board.

Terry Dayvolt asked how long they think it will take from the granting of the permit until the set up.

Mr. Lunenburg said probably 60 days. He said once he gets the permit he will start pouring the concrete and it hopefully won't take 60 days but they would like to have that time.

Mrs. Rector said their application is asking for sixty days.

Mike Winge said you need certified people to pour the concrete for the modular.

Mr. Lunenburg said he does this all the time.

The Chairman called for remonstrators.

Randy O'Risky stated they just kind of answered his question because he just wants to know how long it will be from the time they get the new one set up until – he didn't know if it was opened ended and could be two years from now.

The Chairman said they are looking at 60 days.

Mr. O'Risky said that is all he wanted to know.

Attorney Doll asked Ms. England if she had anywhere else to live.

Ms. England said she did not and added that her existing mobile home has already been sold and so moving it off is not an issue.

Ascertaining there were no other questions from the Board and being no further remonstrators present, the Chairman called for a motion.

Terry Dayvolt made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is this is the only place the applicant has to live and she wants to be on site while they are placing the new home and this is only temporary since the existing mobile home has been sold.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.

10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:

- a) Subject to an Improvement Location Permit being obtained.
- b) Subject to a Building Permit being obtained.
- c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- d) Subject to all utility easement and facilities in place.
- e) Subject to existing mobile home being removed within 60 days from issuance of Certificate of Occupancy.

Mike Winge seconded the motion and it unanimously carried.

Mrs. Rector said they can pick up their approval and permits on Wednesday.

DOCKET NUMBER: BZA-V-17-14

APPLICANT: William James Rininger

OWNER: James O. Boyer

PREMISES AFFECTED: Property located on the S side of Myers Rd. approximately 500' S and 380' W of the intersection formed by Myers Rd. & Bullocktown Rd. Boon Twp. Complete legal on file. 4088 S. Fortune Rd.

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a parcelization to be filed on property not fronting or having ingress/egress to & from the proposed building site from a dedicated & maintained County right of way in an "A" Agriculture zoning district. *Advertised in the Standard July 13, 2017.*

Sherrie Sievers said she was here representing her father, James Boyer and her son Billy Rininger.

Mrs. Rector asked if she has a Power of Attorney to represent them.

Mrs. Sievers stated she does and she will get her a copy of it.

The Chairman called for a staff report.

Mrs. Rector stated they still need the return receipts from Scott Nurrenbern and Steve Marks and she will need to submit them to the office once they come back. She added the property is currently vacant and the surrounding property to the North is Agriculture with residences; east is R-1A & Agriculture with residences; west is agriculture and south is agriculture with some residences. She added the property completely lies within an AE Flood Plain and any structure will require a certified plot plan verifying the first floor of the structure will be 2 feet above the BFE ten feet around the structure. She explained that Fortune Road is a private road giving access to this property and it is not maintained or dedicated to the County. She stated they came to a site review in order to divide the property to create a building site when it was determined they don't front on a County Road. She said Fortune Road is shown on our GIS as a private road and there are 7 parcels of ground that have Fortune Rd. addresses. She said Mr. Boyer owns the strip of ground per deed and pays taxes on it; however, it states it is also an easement for the

other properties. She said Morrie & I discussed the fact it has been this way for many years and not created by Mr. Boyer, it would be a pre-existing, legal non-conforming use of land and a Variance could be applied for the parcelization and one building site. She added they would have to bring the road up to county standards in order for the County to take it over and the County Engineer felt there was no way they could do that since it is only an 18' wide piece of ground. She said they will also have to meet all the requirements of the Health Department in order to obtain a septic permit for the new residence if this Variance for the parcelization is granted. She said of course they will have to submit a parcelization done by a surveyor and normally in these situations if they do approve the Variance they will need to enter into a Hold Harmless Agreement with County in case there is an emergency and the emergency vehicles can't get back to the house or find the house. She said the office will prepare the Hold Harmless and they will sign it and it will be recorded prior to them getting a permit for the house.

Mrs. Sievers said they have already contracted a surveyor, Mark Chamness to do their survey. She said she hasn't got the final plat back.

Terry Dayvolt asked how many lots they are making.

Mrs. Sievers said it will be one building site.

Mrs. Rector said it is on the drawing and she just said it was one new residence and one new parcel.

Discussion ensued over where the new parcel will be.

Attorney Doll asked if the property Mr. Boyer owns ever linked to the other parcels at any time.

Mrs. Sievers said her father owns about 60 acres back there.

Attorney Doll said but touching this property there are other parcels that border the County road and was any time this property a part of that.

Mrs. Sievers said no.

Attorney Doll said so it has always been almost landlocked. He then asked if there has ever been a home on this piece of property.

Mrs. Sievers said not on this piece but her father does have a home farther back on property he owns. She said Fortune Road ends right in front of his house.

Attorney Doll said it has been like this since her father bought the property.

Mrs. Sievers said it was that way when he bought it from Pete Fortune.

Mrs. Rector said all the Fortunes settled out there and made their home sites and that is how that road got its name before the Planning Commission came into effect.

Ascertaining there were no remonstrators present the Chairman called for a motion.

Mike Winge made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the property is a landlocked parcel and has been so before Planning and Zoning and under the law it qualifies as a pre-existing, non-conforming use which gives them the ability to apply for a parcelization.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a) Subject to a Parcelization being filed and approved.
 - b) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
 - c) Subject to all utility easement and facilities in place.

- d) Subject to a Hold Harmless Agreement with Warrick County being executed and recorded prior to any Improvement Location Permit being obtained.

The motion was seconded by Mike Moesner and unanimously carried.

Mrs. Rector said to have the parcelization submitted to the office and she can pick up her approval on Wednesday.

ATTORNEY BUSINESS:

Attorney Doll passed out an outline for hearings and deadlines for the upcoming hearing.

Mike Winge asked about depositions.

Attorney Doll said they have not been scheduled yet.

EXECUTIVE DIRECTOR BUSINESS:

None.

Being no other business the meeting adjourned at 6:20 p.m.

Jeff Valiant, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held July 24, 2017.

Sherri Rector, Executive Director